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BEFORE THE
FEDERAL ELECTION COMMISSION

2014 JUN 23 PM 3: 05

OFFICE OF GENERAL
COUNSEL

Frank Dixon
State Chair, Democratic Party of Oregon
232 NE 9th Ave
Portland, OR 97232,

Complainant,

RESPONSE

v..

Monica Wehby
P.O. Box 3375
Portland, OR 97208,

Dr. Monica Wehby for U.S. Senate
P.O. Box 3375
Portland, OR 97208

MUR # 6817

If He Votes Like That In Salem Imagine What He Will Do In Congress
89358 Cranberry Lane
Bandon, OR 97411

Respondents.

**Response on behalf of If He Votes Like That in Salem Imagine What He Will Do in
Congress Committee:**

If Votes Like That In Salem Imagine What He Will Do In Congress Committee ("If He Votes") is an independent expenditure committee and has at all times operated completely independent from Monica Wehby or Dr. Monica Wehby for U.S. Senate. Rodney Stubbs is the treasurer and person who formed the organization by filing Form 1 on or about March 4, 2014.

Frank Dixon, the State Chair of the Democratic Party of Oregon ("DPO") filed a Complaint and later a Supplemental Complaint alleging violations. He alleges:

1. That If He Votes' advertisements were coordinated communications under 11 C.F.R.

§ 109.21(d);

a. **This is false because other than donating, Andrew Miller has had no involvement with the If He Votes Committee's communications and this allegation should be dismissed.**

2. That If He Votes "may" have failed to report an in-kind contribution for some kind of poll;

a. **No polling was conducted or used by If He Votes, so this allegation should be dismissed.**

3. That one particular advertisement disclaimer did not include the address, phone number or world wide web address for the Committee; and

a. **One advertisement contained the disclaimer but briefly unintentionally lacked the web address on the disclaimer likely due to a website change, and the omission was quickly rectified and the insubstantial defect is not worth the commission's time and should be dismissed.**

4. That If He Votes "may" have failed to timely report its initial expenditure report.

a. **If He Votes filed its initial expenditure reports.**

As will be explained more below, the allegations about coordinated communications are completely false, have zero merit and should be dismissed outright. As a quick summary, Andrew Miller has had zero involvement with the operations of If He Votes and has not been involved in any of the decisions of If He Votes in any way other than donating money and allowing the use of a billboard. The Complainants entire false theory depends upon the supposed involvement of Mr. Miller with both If He Vote's communications, AND Dr. Wehby's campaign strategy. In fact, neither took place.

Second, If He Votes did not fail to report an in-kind contribution for any kind of "polling" allegedly referenced by the Oregonian newspaper and attributed to Mr. Andrew Miller.

If He Votes did not conduct any polling, period. Nor did If He Votes rely on, use or have any kind of polling data in its two communications.

Third, the missing web address was quickly rectified after it was noticed that the ad copy that was produced did not contain the updated website.

Fourth, the reports were filed.

1. **There was no coordination, all communications by If He Votes were independent creations by the consultant and thus independent expenditures.**

The BCRA defines an "independent expenditure" as an expenditure that expressly advocates the election or defeat of a clearly identified federal candidate and is not made in cooperation or consultation with any candidate, candidate's committee or their agents and is not made in concert with or at the request or suggestion of any of these. 2 U.S.C. §431(17). See also 11 CFR 109.1(b)(4).

Political consultant Gregg Clapper was hired to develop the two communications and did so on his own, without consulting with anyone other than Mr. Stubbs. As a preliminary matter, with respect to the alleged "relationship" between Mr. Miller and Ms. Wehby, we wish to note from the outset, that If He Votes does not have any special insight into the relationship status of Mr. Miller, nor his involvement, if any, with Dr. Wehby or her campaign. Neither does If He Votes have much insight into Mr. Miller's involvement with other campaigns, other donations, or polling that may have been done by others, or for other causes. However, the If He Votes Committee does know that Mr. Miller is not an agent, nor a representative, of If He Votes, and that he had no input into the two communications. Any allegation to the contrary by the Democrat complainant is false. Furthermore, from the media sources the that Complainant filed with their Complaint, it appears that Andrew Miller also does not have any involvement with the

Dr. Monica Wehby for U.S. Senate, and that the two had actually had an end to their relationship that ended sometime in 2013. That relationship apparently ended in some turmoil with a police report actually filed. Exhibit 1. Mr. Miller is known in Oregon for contributing to many political causes in Oregon, but there is no evidence that he was intimately involved in Dr. Wehby's campaign, it appears they had recently broken up with a relatively ugly and emotional breakup. However Mr. Stubbs and Mr. Clapper do know that Mr. Miller was most certainly not involved in any decisions made by If He Votes.

Thus, because Mr. Miller was not involved in any substantial way with the Wehby campaign, and was also not involved in the development of either of the two If He Votes messages, there was not coordination.

A quick review of the Complaint shows that it is based on nothing more than false hypothetical speculation from false newspaper stories instead of hard facts. If He Votes has had to seek corrections from various newspapers relating to this committee, seeking retractions from reporters making the same kind of false assumptions that because Loren Parks and Andrew Miller contributed to the committee that somehow they must have been involved in, or part of running the committee. That is not how Mr. Clapper works in his professional consulting. For example, on April 29, nearly a week before the Democratic Party chose to file its complaint, If He Votes was already explaining to the national press such as the Washington Examiner that Mr. Parks and Mr. Miller did not have any involvement in the design, content, placement or strategy of the committee. Exhibit 2.

Mr. Parks and Mr. Miller simply were not informed about the activities of If He Votes and had no knowledge about how the committee was going to message to oppose Senate candidate Jason Conger. Past FEC cases have established that simply knowing each other, or

going to the same events is not sufficient to support an allegation of coordination. *FEC v. Freedom's Heritage Forum*, et. al. Obviously, contributing to an independent expenditure effort by itself cannot be a violation or there could be no independent expenditure committees at all.

However in this case there is drastically more separation between the individuals than in past FEC cases like *Freedom's Heritage*. Political Consultant Gregg Clapper was hired and exclusively responsible for development, content, strategy, ad placement, ad creation, and essentially every aspect of the committee. Mr. Clapper is a well-known political consultant in Oregon and is known for his policy of demanding 100% autonomy and control over the commercial and advertising messaging of the efforts he conducts. Rodney Stubbs was the initial treasurer, was the one who formed the committee, and was a large part of the engine behind its creation because both Mr. Stubbs and Mr. Clapper had been vocal advocates against the Affordable Care Act, Oregon's Cover Oregon, and the "Community Care Organizations" as they relate to Oregon and implementation in Oregon. Stubbs Decl., Clapper Decl. Mr. Conger had made some poor votes in the eyes of Mr. Clapper and Mr. Stubbs, thus he was a political target for defeat. Id. Mr. Miller and Mr. Parks were simply funders of this effort against Mr. Conger. The same two donors were also the two major donors to two other state races seeking to defeat two other incumbent republicans in the Oregon house who had that poor voting record. Exhibit 3.

Mr. Miller has been publicly quoted as saying that his contributions to efforts to defeat Mr. Conger are not related to his relationship with Wehby. The press has also reported that Mr. Miller has said that he and Wehby actually broke up back in 2013. Ex. 2. Mr. Stubbs has never even spoken with, worked with, nor met Andrew Miller until shortly prior to creating this Committee. Stubbs Decl. Mr. Clapper has known Mr. Parks for some time, but has only

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recently started working with Mr. Miller on campaign consulting. Mr. Clapper has no special relationship whatsoever with Monica Wehby or her campaign committee and had never performed any services or consulting for them in the past. Clapper Decl. Thus Mr. Clapper himself could not constitute a common vendor. There is simply no connection at all between the two messages that Mr. Stubbs and Mr. Clapper communicated about Mr. Conger and anyone else's strategy or campaign planning. Certainly people probably repeated the message from the billboard, and from the radio ad, but that was after they had been produced and aired.

In short, no-one beyond Mr. Clapper, and staff to do copy edit, had material input into the two communications that came from If He Votes. Both communications were developed by Mr. Clapper, who did not receive or include any direction, suggestions, editing, or input about what would be in those two communications from Mr. Miller, or Ms. Wehby or anyone associated with the Wehby campaign. Clapper Decl.

The If He Votes Committee had only those two communications. One, was a billboard advertisement that went up about March 19, 2014 and ran one time for about two weeks. The second communication was a radio advertisement which ran about 12 times times from April 9th to April 11, and then by April 17th the omission had been noted and the advertisement was pulled, corrected and back on the air for the remaining radio ads that ran from then until May 16th. Exhibit 5. The radio ad was edited immediately when it was discovered that the contact information part of the disclaimer was not in the message, and a corrected advertisement, nearly identical to the first, was run instead that contained the corrected full disclaimer.

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2. If He Votes Committee conducted no polling and used no polling in development of either of its two communications.

The If He Votes Committee did not conduct any polling at all, and did not use any polling in the development of either of its two communications. Clapper Decl; Stubbs Decl. No polling was paid for by the committee, and none was necessary for the development of the two messages. Id. The various FEC form 3X reports that have been filed between show the exact accounting for all money spent and by deduction it can be seen that no money went to polling. Mr. Clapper developed the radio advertisement, which was done prior to April 3, and the billboard message was complete and final and up by around the middle of March. When they decided to form the committee and speak out against Mr. Conger, Mr. Clapper and Mr. Stubbs were already well aware of the issues which they had disagreement with Mr. Conger on from the recent legislative session and past legislative sessions where the two had opposed the bad legislation.

The Complainant falsely refers to an April 16, 2014 newspaper story cited by the Complainant, and misleading implies that the polling comment was a quote from Mr. Miller, but the statement was from the reporter and was not a quote of Mr. Miller at all, and notably Mr. Miller did not even use the word polling in that article, nor say that he had conducted any polling. Much more importantly, he did not say that the If He Votes Committee did any polling. The Committee did not do any polling and polling by that time around April 16 would have been a waste for the committee, as the radio ad was already running, and the billboard was down. Any polling that was done by anyone else, was not used by If He Votes, and no known polling data at all was used in the formation of the communications. The complaint, and allegations should be dismissed as simply a misinformed political attack by the Democratic Party of Oregon against an opponent.

3. A proofreading or draft error in the advertisement copy led to only part of the disclaimer being read on the radio advertisement for a few days, but the error was immediately corrected.


The radio advertisement started running on approximately April 9, 2014. Somehow the initial advertisement left off the website address when it was recorded. This was unintentional and likely due to a last minute change in the website address, which was taking place at that time due to the hijacking of the initial website. On April 8, If He Votes had to send a DMCA demand letter to an internet service provider to have an infringing (hijacked) website corrected and shut down, and correspondingly If He Votes had to change its web address during that period.

Exhibit 4. As can be seen from the stern demand letter to the hijacker, the Committee took immediate steps to track, resolve and rectify the situation, and did so within a few days. The omission of the website address was an unintentional omission, and was quickly corrected but the rest of the statutory disclaimer was in the ad the entire time. This "allegation" should be dismissed by the Commission.

4. The If He Votes Committee filed its initial report on May 7, 2014.

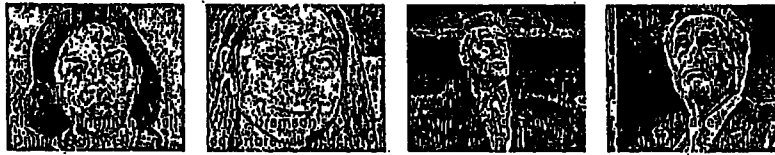
The Complaint erroneously claimed that the Committee did not file its independent expenditure reports. However, the Report of Receipts and Disbursements, FEC Form 3X was filed by Treasurer Carol Russell on April 11, April 14, May 7, and other schedules and reports have or will be filed. The If He Votes Committee would be happy to address or resolve any concerns with that report or any specific expenditures therein.

DATED: May 23, 2014.

By 
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Ore. Senate hopeful accused of stalking boyfriend



By JOHN BRESNAHAN | 5/18/14 5:40 AM EDT

Oregon GOP Senate candidate Monica Wehby was accused by her ex-boyfriend last year of "stalking" him, entering his home without his permission and "harassing" his employees, according to a Portland, Oregon police report.

Wehby, a pediatric neurosurgeon, is the leading Republican candidate to challenge Sen. Jeff Merkley (D-Ore.).

Wehby was questioned by a police officer on April 3, 2013, after being seen leaving the area near the home of Andrew Miller. Miller, the wealthy owner of a timber

company, had been romantically involved with Wehby but their relationship was ending at that time, they both say now.

Wehby, who is vying for the Oregon GOP Senate nomination, was not arrested in the incident.

But the Portland police report (<https://www.documentcloud.org/documents/1160464-1326578-v2.html#document/p1>) detailing the incident said Miller, owner of Stimson Lumber in Portland, was worried that Wehby had come to his home uninvited, and had even entered the residence without his permission. Miller said he was considering getting a protective order against Wehby, the report states.

Miller never sought such an order, however.

Miller and Wehby's relationship has become an issue ahead of Oregon's GOP Senate primary on Tuesday. Miller has helped fund radio and billboard ads slamming one of Wehby's rivals for the Senate nomination, state Rep. James Conger. The Oregon Democratic Party has filed a complaint with the Federal Election Commission against Wehby in which it noted that Miller has given nearly \$31,000 to a super PAC attacking Conger. Miller said he does not think his relationship with Wehby is relevant "outside a group of people who pay a lot of attention to politics."

Miller has spent hundreds of thousands of dollars in recent years backing GOP candidates in Oregon, including Chris Dudley in the 2010 gubernatorial campaign.

In a statement to POLITICO, Wehby said she was unaware that a police report had been filed over the 2013 incident and downplayed the episode.

Exhibit 21

1160464-1326578-v2

"The first time I ever learned of this report was this evening and there really isn't much to it of consequence," Wehby said in her statement. "A year ago I went through the process of concluding a relationship. That relationship ended amicably, and while I'm not pleased that it has been deemed newsworthy, I guess that is the cost of challenging the political status quo."

In an interview, Miller said he now regrets calling the police on Wehby. The couple had dated for about two years, but broke up in 2013. Miller, who is divorced with four children, said they remain friendly.

"There was a week there or so when we were breaking up that people can be emotional. And me included," Miller said. "If I think back to that period of time, I regret saying those things in that light."

"There's a lot of things that I like about Monica and respect about her," Miller added. "I never sought [a protective order]... We're friends."

Miller said he supports Wehby's candidacy, yet he will not be involved in the Senate campaign if Wehby is the Republican nominee. Miller said his efforts to defeat Conger are not related to his relationship with Wehby.

According to the report, Miller left his home when he saw Wehby come in through an unlocked back door, and then he called the police. An officer pulled over Wehby's car when he spotted her driving away from Miller's home in a silver Mercedes sedan and questioned her, but she was not formally detained.

The document, filed by Officer Brent Taylor, states Miller "told me that he wanted to initiate a police report because WEHBY has been 'harassing' his employees and 'stalking' him. He told me that he intended to get a stalking order tomorrow against WEHBY. I asked MILLER what WEHBY had done specifically to make him desire to get a stalking order. He told me that WEHBY has showed up at his home uninvited about 5 times within the last 10 days."

The report adds: "MILLER told me that the last few times he has observed as WEHBY knocked on the doors and rang the door bell repeatedly for the duration of about 10 minutes before finally leaving. MILLER told me that tonight WEHBY did the same thing as she has done the last few times. However, this time MILLER told me that WEHBY walked around to the back of the house and tried the door handle. MILLER told me that after WEHBY discovered that the door was unlocked she entered the residence and attempted to find MILLER."

Miller then left the house, texted Wehby that he was calling the police, and went to a friend's home, the report states.

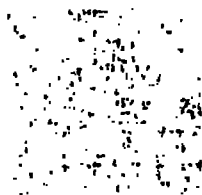
Wehby, 52, told Portland police that she had been romantically involved with Miller for two years prior to the incident and was trying to figure out why their relationship was in trouble. She is divorced with four children.

"WEHBY told me that she was in a relationship with MILLER and had been for the last 2 years," the report said. "She told me that since Easter weekend something changed because now MILLER does not answer/ return her calls or talk to her at all. She told me that she just wanted to speak with MILLER to try to sort things out. WEHBY told me that she was close to MILLER up until this point. She told me that they even each have keys to each others homes."

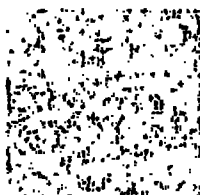
Author: John Bresnahan (jbresnahan@politico.com)

Short URL: <http://politi.co/1nR6bV0>

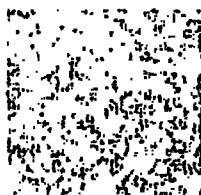
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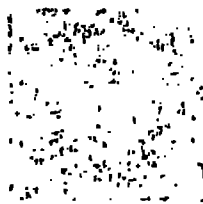
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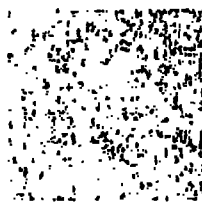
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